

DRAFT PROPOSAL

DIVISION OF EMPLOYMENT AND TRAINING

Workforce New Jersey

Workforce Investment Act

Non-Criminal Complaint/Grievance, Hearing and Review

Procedures at the Local Area, State and Federal Level

Proposed New Rules: N.J.A.C. 12:42-1

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C.A. §2931
and 20 CFR §667.600 et seq.

Proposal Number: PRN

The agency proposal follows:

Summary

The Federal Workforce Investment Act (WIA) was enacted in 1998 to consolidate, coordinate, and improve employment, training, literacy, and vocational rehabilitation programs in the United States, and for other purposes. Title I of WIA, Workforce Investment Systems, is designed to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation. (see 29 U.S.C.A. §2811).

Under the WIA, the Governor of each State is responsible for planning, administration, coordination and oversight of workforce investment systems. In New Jersey, the Governor has delegated her responsibility under the WIA to the Commissioner of the Department of Labor. Within the Department of Labor, the Division of Employment and Training under the Workforce New Jersey office handles the responsibilities under the WIA.

Pursuant to 29 U.S.C.A. §2931 each State and local area receiving an allotment under Title I of WIA shall establish and maintain a procedure for grievances or complaints alleging violations of the requirements of this title from participants and other interested or affected parties. Such procedure shall include an opportunity for a hearing and be completed within 60 days after filing the grievance or complaint.

20 CFR §667.600 implements 29 U.S.C.A. §2931 and requires that each Local Area, State and direct recipient of funds under Title I of WIA establish and maintain a procedure for grievances and complaints, a State level review procedure for resolving appeals from the local Area grievance process, a State level hearing procedure for dealing with complaints and grievances from participants and other interested parties affected by the Statewide Workforce Investment programs, and a process to allow allegations of labor standards violations to submit the grievance to binding arbitration if a collective bargaining agreement so provides. 20 CFR §667.640 implements 29 U.S.C.A. §2842 which requires an appeal process for training providers denied approval by the local workforce investment board and the State agency, and an appeal procedure for training providers terminated from the approved state list for supplying inaccurate information or for violations of any requirement under the WIA. 20 CFR §667.640 also implements 29 U.S.C.A. §2931 with respect to the establishment of due process procedures for

the expeditious appeal of complaints arising from participants subject to testing and sanctioning for use of controlled substances.

The purpose of these proposed new rules is to set forth the grievance, hearing and review procedures that apply at the Local Area, State and Federal level for non-criminal complaints and appeals. These proposed new rules are necessary to implement 29 U.S.C.A. §2931 and 20 CFR §667.600 et seq.

N.J.A.C. 12:42-1.1 sets forth the purpose of the proposed new rules.

N.J.A.C. 12:42-1.2 sets forth the scope. The procedures at the Local Area level apply to WIA participant complaints, complaints from other interested parties affected by the local workforce investment system, individuals alleging violations of labor standards at 29 U.S.C.A. §2931, complaints from businesses, agencies and organizations who are recipients of WIA contracts, and complaints from WIA participants subject to testing and sanctioning for the use of controlled substances. There are two procedures at the State level. The State review procedures apply to appeals from decisions of the Local Area grievance and complaint process for WIA participants, local recipient contractors, individuals alleging violations of labor standards and other interested parties affected by the local workforce investment system. The State hearing procedures apply to grievances and complaints from WIA participants of direct recipients who carry out programs under statewide workforce investment activities, complaints from training providers denied or terminated from eligibility as an approved training provider, complaints from direct recipients and other complainants who must seek resolution initially at the State level (the complaint not subject to review at the Local Area level).

12:42-1.3 sets forth the definitions of terms used in the proposed new rules.

12:42-1.4 sets forth the time deadline for filing complaints. The deadline for filing non-criminal complaints at the Local Area and State level is three years from the date of the alleged occurrence.

12:42-1.5 sets forth the minimum grievance and hearing requirements at the Local Area level. Under this section, a Local Area can adopt its own procedures provided it follows the minimum requirements or adopts the procedures set forth under this section. The minimum grievance and hearing requirements under this section include: a written notice of the date, time and place of the hearing, a right to be represented by an attorney, a right to bring evidence and witnesses, a right to cross-examine witnesses, a right to an impartial hearing, a right to a tape recorded hearing, a right to a written decision within 60 days of the filing of the complaint, and a written notice of the right to appeal an adverse decision or lack of a decision by the Local Area to the State.

12:42-1.6 sets forth the review procedures at the State level. Under this section, a request for a review of a decision or lack of decision at the Local Area must be submitted within 30 days from the date on which the adverse decision was received or should have been received. After review of the matter, the Commissioner will issue a decision within 45 days of receipt of the request for review.

12:42-1.7 sets forth the hearing procedures at the State level. Under this procedure any participant, direct contractor of statewide workforce investment programs or activities, interested parties affected by statewide workforce investment activities, training providers denied eligibility or terminated from eligibility as an approved provider for WIA funded programs, or any other complainant who must seek resolution initially at the State level because the complaint is not subject to review at the Local Area level, may request a hearing. The Commissioner shall attempt to resolve the complaint informally prior to rendering a decision within 20 days of

receipt of the complaint based upon the written record. If the decision is adverse or not rendered within 20 days, either party may request an impartial hearing which shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-16.1. A decision is to be made within 30 days of the receipt of the written request for a hearing. With agreement of the complainant, the 30 day period may be extended 30 days.

12:42-1.8 sets forth the Federal review procedures. If the Commissioner fails to issue a decision as required by N.J.A.C. 12:42-1.6 or N.J.A.C. 12:42-1.7 or if the decision has been reached, the party to which the decision is adverse can request a review by the Secretary, United States Department of Labor. The request for review must be made within 120 days from the date the complainant should have received a decision or within 60 days of the receipt of the decision being appealed. The Secretary will make a decision on the appeal within 120 days after receiving the appeal. Decisions under the State appeal process in N.J.A.C. 12:42-1.6 and N.J.A.C. 12:42-1.7 for complaints of a denial or termination of eligibility of a training provider and complaints for the testing and sanctioning for use of controlled substances may not be appealed to the Secretary of Labor.

12:42-1.9 sets forth the hearing procedures for training providers denied or terminated as eligible training providers under 29 U.S.C.A. §2842 by the State Employment and Training Commission. Training providers shall use the State level hearing procedures at N.J.A.C. 12:42-1.7. Training providers denied eligibility or terminated under 29 U.S.C.A. §2842 by a department of the state or by an agency of the local One-Stop operator must first use the grievance procedure of the department or agency which denied or terminated the training provider. A provider of on-the-job or customized training denied or terminated from eligibility under 29 U.S.C.A. §2842 shall use the Local Area grievance and hearing procedure at N.J.A.C. 12:42-1.5. A decision under this State hearing procedure may not be appealed to the Secretary, United States Department of Labor.

12:42-1.10 sets forth the hearing procedures for WIA participants subject to testing and sanctioning for use of controlled substances under a State policy established pursuant to 29 U.S.C.A. §2931. For WIA participants at the Local Area level, the local grievance and hearing procedures at N.J.A.C. 12:42-1.5 apply. For WIA participants of statewide workforce investment programs and direct recipients, the grievance and hearing procedures at the State level at N.J.A.C. 12:42-1.7 apply.

12:42-1.11 sets forth the procedure that Secretary will take when any recipient has discriminated against a participant or any individual connected to the administration of the program involved or against any individual because such individual has filed a complaint or is about to testify in a proceeding or investigation related to Title I of WIA or the individual is unlawfully denied a benefit to which that individual is entitled. The Secretary shall take action or corrective measures as necessary within 30 days.

12:42-1.12 sets forth the grievance and hearing procedure for denials of program eligibility by applicants. For applicants of Local Area programs, the local level procedure shall apply. For applicants of statewide workforce investment programs in which the eligibility determination is conducted by direct recipients of such programs, the State level hearing procedure at N.J.A.C. 12:42-1.7 shall apply.

12:42-1.13 sets forth the remedies that may be imposed under local, State and direct recipient grievance procedures. Such remedies that may be imposed for violation of Title I of WIA shall be limited to: suspension or termination of payment under Title I of WIA, prohibition of placement of a participant with an employer that has violated any requirement of Title I of WIA,

reinstatement of the employee, payment of lost wages and benefits and reestablishment of other terms and conditions, and where appropriate, other equitable relief.

Social Impact

The proposed new rules will benefit WIA participants who are aggrieved by local recipients, the Local Area, or direct recipients of statewide workforce investment systems as they provide WIA participants with procedures that can be used to address grievances. The proposed new rules similarly benefit any other interested person affected by local and state workforce investment systems, organization, agency or training provider who challenge the legality of State, Local Area grant recipients and other recipient action under the WIA.

The proposed new rules will benefit Local Areas, local and State recipients and the Department of Labor as they provide standards for conducting the required hearings and reviews under the WIA.

Economic Impact

The proposed new rules will benefit Local Areas and recipients as they set forth standard procedures to be followed. Standard procedures will eliminate confusion concerning hearing and review procedures and result in greater efficiency at all levels.

Regulatory Flexibility Statement

The proposed new rules will not impose any reporting, recordkeeping or compliance requirements upon small businesses, as the rules merely implement the requirements of WIA and the regulations that implement WIA, which Local Areas, local and direct recipients have been following under N.J.A.C. 12:41-1.1 et seq. for the Job Training Partnership Act which has been repealed, effective, July 1, 2000. The WIA and its implementing regulations do not provide for a business sized related differentiation in requirements. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 42

DIVISION OF EMPLOYMENT AND TRAINING

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), U.S.C.A. 2931 and 20 CFR § 667.600 et seq.

Source and Effective Date

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[NOTE: Changes from the JTPA grievance procedure are shown underlined.]

SUBCHAPTER 1. WORKFORCE INVESTMENT ACT (WIA): NON-CRIMINAL COMPLAINT/GRIEVANCE, HEARING AND REVIEW PROCEDURES AT THE LOCAL AREA, STATE AND FEDERAL LEVEL

12:42-1.1 Purpose

The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Workforce Investment Act (WIA) at 29 USC §2931, 29 USC §2842 and the regulations that implement the WIA at 20 CFR Sec. 667.600 et. seq.

12:42-1.2 Scope

(a) Each Local Area shall follow, at a minimum, the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.5. The Local Area grievance and hearing procedures shall apply to the following:¹

1. WIA complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers; and
2. Local recipient complaints (schools, contractors, employers with on-the-job training or customized training contracts; and consultants).
3. Individuals alleging labor standards violations under Section 181 of WIA.
4. Complaints from WIA participants subject to testing and sanctioning for the use of controlled substances imposed by a State policy established for WIA.

¹ Grievance and hearing procedures at the employer level contained in the JTPA grievance procedure at 12:41-1.2 (a) and at section 12: 41-1.5 are deleted. There is no equivalent provision in WIA at Section 181(c) (29 USC 2931). Such grievances will be handled in the same manner as other participant complaints, except for those alleging violations of labor standards which will be handled as provided herein.

(b) The State review procedures set forth at N.J.A.C. 12:41-1.6 shall apply to the following:

1. WIA participant appeals from decisions at the Local Area level;
2. Local recipient appeals from decisions at the Local Area level; and
3. Appeals by other interested persons from decisions at the Local Area level.

4. Appeals by WIA participants of decisions at the Local Area level subject to testing or sanctioning for the use of controlled substances.

(c) The State hearing procedures set forth at N.J.A.C. 12:42-1.7 shall apply to grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment Programs, complaints from training providers denied or terminated from eligibility as a training provider, WIA participants of direct recipients of Statewide Workforce Investment Programs subject to testing or sanctioning for the use of controlled substances and other complainants who must seek resolution initially at the State level (complaint not subject to review at the Local Area level).

1. All Local Areas and direct recipients shall provide its participants, upon their enrollment, with a copy of the State hearing procedures.

2. Each Local Area shall also provide local recipients with a copy of the State hearing procedures no later than the date of the contract between the Local Area and the local recipient.

(d) The audit resolution procedures set forth at N.J.A.C. 12:41-1.8 shall apply to subrecipients adversely affected by the results of an audit, monitoring and oversight² reviews.

(e) The Federal review procedures set forth at N.J.A.C. 12:42-1.8 shall apply to appeals from complainants who did not receive a decision at the State level or a decision was reached at the State level and the party to which the decision was adverse wishes to appeal.

(f) Training providers denied eligibility by the Local Workforce Investment Board or the State Employment and Training Commission as an approved eligible provider or terminated from such eligibility shall have the opportunity to appeal such denial or termination under N.J.A.C. 12:42-1.9. There is no appeal to the Secretary for denials of such eligibility or from decisions to terminate training providers.

(g) WIA participants subject to testing and sanctioning for use of controlled substances have the opportunity to institute a grievance concerning such actions under N.J.A.C. 12:42-1.10. There is no appeal to the Secretary.

² Grievance procedures under WIA do not include monitoring and oversight reviews as did the JTPA regulations at § 627.502

(h) Under N.J.A.C 12:42-1.11, the Secretary will take action or order corrective measures against any recipient if participants are discriminated against because they have filed a grievance, instituted a complaint, are about to testify in any proceeding or investigation under Title I of WIA, or are unlawfully denied any benefit they are otherwise entitled to receive.

(i) In cases in which an applicant or participant disagrees with an eligibility determination for services or training under Title I of WIA, such applicant or participant may file a grievance in accordance with N.J.A.C. 12:42-1.12.

(j) N.J.A.C. 12:42-1.13 outlines the remedies that may be imposed under any local, State or direct recipient grievance procedure, which include suspension or termination of payments, prohibition of placement of a participant with an employer that has violated any requirement under WIA, Payment of lost wages and benefits and other equitable relief.

(k) Nothing in this subchapter shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for violation of Section 181 of the WIA, (Labor Standards).

12:42-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner, New Jersey Department of Labor or his or her authorized designee.

"Complainant"--means the individual, group or agency alleging a non-criminal violation of the WIA and/or related agreements and makes an informal or formal complaint.

"Director" means the Director of the Division of Employment and Training, Workforce New Jersey, New Jersey Department of Labor.

"Direct recipient" means any person or government department, agency or establishment (private-for-profit/nonprofit) that receives Federal WIA funds to carry out WIA programs through the Commissioner but does not include an individual who is a beneficiary of such a program or local recipient as defined below.

"Eligible training provider" means a training provider approved by the State Employment and Training Commission for purposes of Section 122 of the WIA. Eligible providers are also local recipients.

"Local Area" means a local workforce investment area designated under 29 USC §2831.

"Local recipient" means any person or government department, agency or establishment (private-for-profit/nonprofit) that receives Federal WIA funds to carry out WIA programs through a Local Area but does not include an individual who is a beneficiary of such a program.

"Participant" means an individual who has registered and has been determined eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIA Title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA Title I.

"Recipient" means the State of New Jersey.

"Respondent" means the individual, group or agency against whom a complaint is made and to whom opportunity is given to participate in the complaint resolution process.

"Secretary" means the United States Secretary of Labor.

"State Employment and Training Commission" means the commission created by N.J.S.A. 34:15C-1 et seq.

"WIA" means the Workforce Investment Act of 1998, 20 USC §9201.

12:42-1.4 Deadline for filing complaints

The deadline for filing non-criminal complaints at the Local Area and State level shall be three years from the date of the alleged occurrence.³

12:42-1.5 Grievance and hearing procedures at the Local Area level

(a) Each Local Area shall establish and maintain grievance and hearing procedures for grievances or complaints about its programs and activities from participants, local recipients, and WIA participants subject to testing or sanctioning for the use of controlled substances and other interested persons affected by the local workforce investment system. The procedures shall include the resolution of complaints alleging a violation of the WIA, regulations, grants or other agreements under the WIA.

(b) The grievance and hearing procedures shall contain, at a minimum, the following requirements:

1. Upon enrollment into a WIA program, the Local Area shall provide participants with a written description of the grievance procedures which shall include the requirements set forth in (b) 4 through 7 below. The Local Area shall also provide local recipients with these procedures no later than the date of execution of the contract or individual training account between the Local Area and the local recipient. The Local Area shall also provide participants, local recipients, or any grievant with the procedures at the time a complaint is raised.

³ WIA does not have a time limit for the filing of complaints. JTPA had a one-year limit. A three-year limit for WIA is being recommended here.

2. The Local Area shall maintain evidence that the grievance and hearing procedures have been provided to participants and to local recipients.

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the WIA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4. The Local Area may provide for an informal resolution of a complaint/grievance which, if provided, shall be completed prior to the hearing date.

5. The Local Area shall provide for the completion of the hearing and a written decision on a complaint/grievance to be conducted in the locale of the complainant within 60 days of the filing of the grievance or complaint.

6. The Local Area shall provide participants and local recipients with the name, address and telephone number of the local official to whom complaints and grievances can be directed.

7. At a minimum, the Local Area shall also provide participants and local recipients with the following at enrollment in the case of participants, and upon contracting or establishing an individual training account in the case of local recipients, and at the time a complainant indicates that he or she wishes to file a complaint:

i. A written notice of the date, time and place of the hearing;

ii. An opportunity to be represented by an attorney or other representative of the complainant's choice;

iii. An opportunity to bring witnesses and documentary evidence. Local Area recipients and other subrecipients, shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant, and to release requested documents unless privacy laws and other laws intervene to take precedence.

iv. An opportunity to question any witnesses or parties;

v. An impartial hearing;

vi. A verbatim or tape recording of the hearing;

vii. Written notice that the complainant is entitled to a hearing and a written decision shall be made by the hearing officer or designated representative of the Local Area within 60 days of the filing of the complaint/grievance.

viii. Written notice that the complainant has a right to an administrative review by the Commissioner if the decision is adverse or is not made within 60 days of the filing of the complaint.

ix. The name and address of the State agency to whom the request for an administrative review is to be addressed and other information needed to file the request for review with the State;

x. Written notice that the complainant must file the request for an administrative review with the Director within 30 days of receiving the adverse decision or the date the decision should have been made. Upon request, the complainant or respondent may extend this period an additional 15 days.⁴

xi. Written notice that the complainant has three years to submit a complaint after the date of the occurrence (except for complaints regarding discrimination which have a 180 day limitation subject to an extension for good cause granted by the Directorate of Civil Rights).

xii. Written notice that the complainant may submit a complaint alleging violations of Section 181 labor standards to the Secretary of Labor when the complainant has exhausted the local and State grievance procedures, or when the 60 day time period specified for reaching a decision has elapsed without a decision. The complainant should also be informed that he or she has a right to submit the complaint to binding arbitration if a collective bargaining agreement covering the parties to the grievance so provides.⁵

xiii. Written notice that the complainant has a right to request a review by the Commissioner and by the Secretary if the State has not reached a decision within 45 days of receipt of the grievance or complaint or within 45 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary. The complainant must also be informed that when a decision is made at the State level, the party to which the decision is adverse may appeal to the Secretary.

xiv. Written notice of the requirements of the review procedures at the State level contained at N.J.A.C. 12:42-1.6.

xv. Written notice that the complainant must exhaust the remedies at each level prior to making an appeal to the next higher level.⁶

8. The Local Area may require the complainant to notify the Local Area when an appeal is made to the State or to the United States Department of Labor.

⁴ WIA does not indicate the time period for local area complainant appeals to the State level. The JTPA period was 10 and 15 days respectively for adverse decisions and when no decision was made within 60 days. The recommended 30 day period and 15 day extension for WIA is a fairer period to prepare an appeal.

⁵ The administrative code at 12:41-1.6 (b)7.xii. and JTPA Federal Regulations at §627.604 (c) indicates that the appeals to the Secretary are not available if the complaint is submitted to binding arbitration. This has been removed as WIA regulations at §667.600 and §667.610 do not prohibit appeals to the Secretary.

⁶ This provision is retained although there is no equivalent in WIA.

12:42-1.6 Review procedures at the State level

(a) If a participant, local recipient or other interested persons affected by local workforce investment programs does not receive a decision at the Local Area level within 60 days of filing the complaint or either party is dissatisfied with the local hearing decision, either party may file a request for a review at the State level.

1. The request for review shall be filed within 30 days of the receipt of the adverse decision or the date on which the complainant and respondent should have received a decision. Upon request, the complainant or respondent may extend this period an additional 15 days.

(b) Each request for a review shall be submitted to:

New Jersey Department of Labor
Director, Division of Employment and Training
Workforce New Jersey
P.O. Box 055
Trenton, New Jersey 08625-0055

(c) Upon filing the request for review, the complainant shall simultaneously submit the following:

1. The full name, address, and telephone number of person(s) making the complaint/grievance;

2. The full name and address of the respondent (if any) against whom the complaint or grievance was made;

3. A clear and concise statement of the facts of the grievance;

4. Pertinent dates, including the date the grievance was filed at the local level, the date of the alleged occurrence or act for which the complaint was filed and the date a written decision was reached or should have been reached;

5. If applicable, citations to the provisions of the WIA or other agreements under the Act believed to have been violated;

6. A statement disclosing other steps pursued at any level regarding the complaint/grievance in question; and

7. A copy of the local written decision if such was rendered.

(d) The Commissioner shall issue a written decision within 45 days of receipt of the request for appeal of a local level grievance. The Commissioner's decision is the final State action.

(e) Appeals to the Secretary shall be made in accordance with Federal review procedures at N.J.A.C.12:42-1.8 of this subchapter. Complaints regarding appeals of decisions made for the testing or sanctioning for the use of controlled substances may not be appealed to the Secretary.

(f) Local Area grievances and complaints which are not implemented in accordance with N.J.A.C. 12:41-1.5 will be remanded to the Local Area for disposition in accordance with that section.

(g) If the complaint or grievance is based upon alleged discrimination, the complaint shall be filed in accordance with Section 188(b) of the WIA, 29 USC §2938 and the Department of Labor nondiscrimination regulations implementing that section.

12:42-1.7 Hearing procedures at the State level

(a) Any participant, direct recipient or other interested parties affected by Statewide Workforce Investments programs, and training providers denied eligibility or terminated from eligibility as a training provider for purposes of approval on the State list of eligible providers, or any other complainant who must seek resolution initially at the State level, having a complaint not subject to review at the Local Area level, may submit to the Commissioner a request for review. The request for review shall be in writing and specify the basis for the complaint.

(Delete) 1. Any participant, subcontractor or other interested party aggrieved by a local recipient may submit to the Commissioner a written request for review.⁷

(b) Upon receipt of the written request for review, the Commissioner shall provide the complainant or respondent with written notice of the request. The written notice shall set forth that the complainant or the respondent may present documentary evidence he or she deems necessary for the Commissioner to render a decision. The Commissioner shall review the documentary evidence presented by the parties and shall request any additional information or conduct any investigation necessary to render a decision.

(c) The Commissioner's decision shall be based on the written record and rendered within 20 days after receipt of the request for review. The decision shall advise the parties of the right to an impartial hearing.

1. The Commissioner shall attempt to resolve the complaint informally prior to rendering a decision based on the written record.

(Deleted)--2. The Commissioner may, upon agreement by both parties, extend the time period for the review by 15 days if informal resolution seems imminent.⁸

⁷ This has been repeated from the JTPA grievance procedure, but should be deleted from this section. These parties *must* file their grievance first at the Local Area level as the resolution of local complaints *must* first be handled at the local level. This should never have been included in the State level hearing procedure; it should be deleted and become part of the local area grievance procedure.

(d) If the decision of the Commissioner is adverse to either party or the decision is not made within 20 days the complainant or respondent may request an impartial hearing.

1. The request for an impartial hearing shall be submitted in writing to the Commissioner within 10 days of receipt of the adverse decision or 15 days from the date on which the complainant should have received a decision.

(e) Upon receipt of the request for a hearing, the Commissioner shall refer the matter to the Office of Administrative Law for hearing before an administrative law judge.

(f) The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-16.1 et seq. The Commissioner shall render a written decision in the matter within 30⁹ days of the receipt of the written request for a hearing. The Commissioner's decision shall be final. The 30 day period may be extended up to 30 days with the agreement of the complainant.

(g) If the Commissioner fails to issue a written decision within 60 days or the period specified in subsection (f), of receipt of the initial complaint, or the decision relating to the complaint or grievance has been reached and the party to which such decision is adverse, the complainant or respondent may appeal to the Secretary pursuant to 20 C.F.R. 667.610 et seq. utilizing the procedures set forth at N.J.A.C. 12:42-1.8.

(h) The Secretary will not review appeals from complaints at the State level from complainants subject to testing and sanctioning for the use of controlled substances or from training providers denied eligibility or terminated as an eligible training provider.

12:42-1.8 Federal review procedures

(a) Appeals to the Secretary may be made as follows:

1. The Commissioner fails to issue a decision as required by N.J.A.C. 12:42-1.6; or a decision relating to the grievance or complaint has been reached and the party to whom such decision is adverse; or

2. The Commissioner fails to issue a decision as required by N.J.A.C. 12:42-1.7, or a decision relating to the grievance or complaint has been reached and the party to whom such decision is adverse.

(b) A complainant or respondent making a request to the Secretary on a grievance shall use the following procedures and submit the following information when filing the appeal:

⁸ The 15 day extension of the 30 day review period as in the JTPA grievance procedure has been deleted here because of the reduced time period. See footnote #9 below.

⁹ The Federal JTPA regulations at § 627.503(b) for State level review procedure under JTPA provided for a two level procedure allowing a total of 90 days. WIA regulations allow only a 60 day procedure which could be a one-step process.

1. The request shall be filed within 120 days from the date on which the complainant should have received a decision or within 60 days of the receipt of the decision being appealed. Appeals shall be submitted to the Secretary at the address below by certified mail, return receipt requested.

Secretary
U.S Department of Labor
Washington, D.C. 20210
Attention: ASET

A copy of the appeal must be simultaneously provided to the below listed Employment and Training Administrator (ETA) and to the opposing party.

ETA Administrator
Employment and Training Administration
201 Varick Street
New York, New York 10014

2. The full name, address and telephone number of the person making the complaint;
 3. The full name and address of the respondent against whom the complaint is made;
 4. A clear and concise statement of the facts, including pertinent dates, constituting the grievance.
 5. Citations to the provisions of the WIA, regulations, grant or other agreements under the WIA believed to have been violated;
 6. A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and
 7. For complaints initiated under the Local level grievance procedure and appealed at the State level under N.J.A.C. 12:42-1.6 or a State level complaint initiated under N.J.A.C. 12:42-1.7, a statement of the date the complaint was filed with the Commissioner, a copy of the decision issued by the Commissioner, or, if a decision was not issued by the Commissioner, the date on which the Commissioner should have issued a decision, and an attestation that no decision was issued.
- (c) A request shall be considered filed when the Secretary receives from the complainant or respondent a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and the Local Area.
- (d) The Secretary will make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving such appeal.

(e) Except for complaints arising under WIA Section 184 (f) (Discrimination against participants, as provided in N.J.A.C.12:42:1-11), grievances or complaints made directly to the Secretary will be referred to the appropriate State or Local Area for resolution in accordance with this subchapter, unless the Secretary notifies the parties that the Department will investigate the grievance under the procedures at 20 CFR 667.505, U.S. Department of Labor resolution of investigative and monitoring findings.

(f) A complainant or respondent shall notify the Commissioner if he or she plans to submit an appeal to the United State Department of Labor. Any local recipient, direct recipient or Local Area upon learning of a complainant's or respondent's intention of filing an appeal to the United States Department of Labor shall inform the Commissioner.

(g) Decisions under the State appeal process in N.J.A.C.12:42-1.6 and N.J.A.C. 12:42-1.7 for complaints of a denial or termination of eligibility as a training provider and complaints for the testing and sanctioning for use of controlled substances may not be appealed to the Secretary.

12:42-1.9 Denial or termination of eligibility as a training provider

(a) A training provider denied or approved by the Local Board as an eligible training provider under Section 122 of WIA and subsequently denied eligibility by the State Employment and Training Commission shall appeal such denial to the Commissioner pursuant to the hearing procedures at N.J.A.C.12:42-1.7. The Commissioner shall obtain documentation of the reasons for the denial or approval of the training provider by the Local Board and the State Employment and Training Commission.

(b) A provider of on-the-job training or customized training denied eligibility as an eligible provider shall appeal such denial pursuant to the Local grievance and hearing procedures at N.J.A.C.12:42-1.5.

(c) An eligible training provider terminated under the provisions of Section 122(f) of the WIA, may appeal to the Commissioner under the hearing procedures at N.J.A.C.12:42-1.7. The eligibility of a training provider will be terminated under the following conditions as set forth in Section 122(f) of WIA:

1. If the Commissioner, after consultation with the Local Board involved, determines than an eligible provider or individual supplying information on behalf of the provider intentionally supplies inaccurate information under Section 122 of the WIA, the Commissioner shall terminate the eligibility of the provider to receive adult and dislocated worker funds received by Local Areas for any program for a period of time, but not less than two years.

2. If the Commissioner, or the Local Board working with the Commissioner, determines than an eligible provider described in subsection 1. Substantially violates any requirement under the WIA, the Commissioner or the Local Board working with the Commissioner, may terminate the eligibility of such provider to receive adult and dislocated worker funds received by Local

Areas for the program involved or take such other action as the Commissioner or Local Board determines to be appropriate.

3. A provider whose eligibility is terminated under subsections 1. or 2. for a program shall be liable for repayment of all Local Area funds for adult and dislocated workers received for the program during any period of noncompliance described in such subsection.

4. Any remedies and penalties assessed pursuant to this section shall supplement and do not supplant, other civil and criminal remedies and penalties.

(d) A training provider denied eligibility for purposes of Section 122 of WIA (29 USC 2842) by a department of State government or denied eligibility by a partner of the local One-Stop system identified in Section 101(30) of WIA (29 USC 2801), must use the grievance procedure of the agency partner prior to filing any appeal under this section.

(e) A decision under this State hearing process may not be appealed to the Secretary.

12:42-1.10 Hearing procedures for WIA participants subject to testing and sanctioning for use of controlled substances

(a)WIA participants subject to testing for use of controlled substances or WIA participants sanctioned after testing positive for the use of controlled substances under a State policy established in accordance with WIA Section 181(f) shall appeal as follows:

1. For participants of Local Boards or local recipients the procedures in N.J.A.C.12:42-1.5, local grievance and hearing procedures apply.

2. For participants of Statewide Workforce Investment Programs or direct recipients, the hearing procedures at the State level at N.J.A.C.12:42-1.7 apply.

(b) Appeals made by WIA participants in accordance with this section shall be expedited to the fullest extent possible.

12:42-1.11 Discrimination against participants

If the secretary determines that any recipient under Title I of WIA has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to Title I of WIA, or has testified or is about to testify in any such proceeding or investigation under or related to Title I of WIA, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of Title I of WIA or the Secretary's regulations, the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

12:42-1.12 Program eligibility determination complaints

In cases where an applicant or participant disagrees with the eligibility determination made by a Local Area, the local level grievance procedure shall apply. In cases where an applicant or participant disagrees with the eligibility determination made by a direct recipient, the State level hearing procedure at N.J.A.C. 12:42-1.7 shall apply. Applicants or participants who disagree with the eligibility determination must be advised that they may use the grievance system to appeal the initial eligibility determination.

12:42-1.13 Remedies

(a) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at Section 181 of WIA. Such remedies that may be imposed under this section for violation of any requirement under Title I of WIA shall be limited--

1. To suspension or termination of payments under Title I of WIA;
2. To prohibition of placement of a participant with an employer that has violated any requirement under this Title I of WIA;
3. Where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
4. Where appropriate, to other equitable relief.

* * *

Complaints regarding labor standards violations

NOTE: The JTPA grievance procedures under N.J.A.C.12:41-1.1 et. seq. contain the below listed sections regarding violations of labor standards. These were based upon 20 CFR 627.603, Special handling of labor standards violations under Section 143 of the JTPA, and 627.604, Alternative Procedure for handling labor standards violations under section 143 of the Act--binding arbitration. The Workforce Investment Act and its regulations do not have any similar provisions. Therefore, a decision needs to be made whether these current sections in the JTPA grievance procedure are to be retained, updated or re-written for WIA.

The N.J.A.C. sections in the JTPA grievance procedure are:

1. 12:41-1.12 Section 143 labor standards violations: complaints
2. 12:41-1.13 Section 143 labor standards complaints: remedies
3. 12:41-1.14 section 143 labor standards complaints: binding arbitration